

SOFTWARE MAINTENANCE SERVICE AGREEMENT IMAGE ONE

THIS DOCUMENT DESCRIBES THE SERVICES TO BE PROVIDED BY IMAGE ONE (IO):

1. SERVICE

IO agrees to provide maintenance and repair services for the software ("Software") listed on your invoice for services ("Invoice."). Software is referred to as the system ("System").

- a) **Software Maintenance & Support Services:** IO shall, during the contracted period, furnish all service necessary to maintain the Software in good working order. IO will provide software support via remote access as part of this agreement. Customer agrees to provide internet connectivity to the System at its expense. IO will provide the software necessary to enable the remote connection. If Customer elects not to make remote access available, labor (including travel) for on-site software support service calls will be chargeable to Customer in accordance with IO's local prevailing hourly labor rates. There will be no labor charge for on-site software support for which remote access is made available but for which IO is unable to resolve any support issue remotely.
- b) **Training:** User training does not constitute maintenance service, and is not covered by this agreement. User training is provided at time of Software installation as called for by the terms of the purchase agreement. Additional training may subsequently be purchased at rates negotiated by parties to this agreement, but this agreement will not be construed to include training.
- c) **Response Time:** When Software on-site repairs are necessary, IO shall respond during IO service hours within 8 hours of IO's receipt of Customer's service request. Unless otherwise defined on your Invoice, the service hours for IO to provide routine maintenance and/or repair service for the System will be between the hours of 8:30 AM and 5 PM prevailing local time, Monday through Friday, excluding days observed by IO as holidays.
- d) **Non-Covered Service:** IO will attempt to respond to all requests for service. If service is provided outside IO's service hours (excluding Sundays and Holidays), labor for such non-covered service calls will be chargeable to Customer in accordance with IO's local prevailing hourly labor rates plus 50%. If service is provided on Sundays or Holidays, labor for such non-covered service calls will be chargeable to the Customer in accordance with IO's local prevailing hourly labor rates plus 100%. However, parts and other material costs will be covered even for after-hours service under this Agreement, unless excluded under Section 5 hereof, "Exclusions."

2. TERM

The term of this Agreement shall be one (1) year, or as otherwise indicated on Invoice.

3. SERVICE FEE

- (a) Customer agrees to pay the service fees in advance as billed for the term of this Agreement.
- (b) If new or additional software is added to the System subsequent to the date of the initial installation of the System, a new service fee will be calculated, to reflect the increased scope of service and maintenance.
- (c) If Customer does not make timely payment to IO of any amount payable under this Agreement, then in addition to the remedies available to IO at law or equity or under other provisions of this Agreement, IO may collect interest on the sum then owing at the rate of 1.5% per month from the due date until payment by Customer, provided, however, that in no event shall the aggregate interest charges exceed the maximum rate of interest which could be charged under applicable law.

4. LIABILITIES

- (a) IO EXTENDS NO WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, TO CUSTOMER FOR THE SERVICES PROVIDED BY THIS AGREEMENT.
- (b) IO WILL NOT BE LIABLE TO CUSTOMER FOR ANY SPECIAL, INCIDENTAL, OR CONSEQUENTIAL DAMAGES, OR FOR LOSS, DAMAGE, OR EXPENSE DIRECTLY OR INDIRECTLY ARISING FROM CUSTOMER'S USE OF (OR INABILITY TO USE) OR A THIRD PARTY'S UNAUTHORIZED USE OF THE SOFTWARE OR ITS COMPONENTS, EITHER SEPARATELY

OR IN COMBINATION WITH OTHER SOFTWARE OR EQUIPMENT, OR FOR COMMERCIAL LOSS OF ANY KIND, REGARDLESS OF WHETHER IO OR ITS SUBCONTRACTORS HAD BEEN ADVISED OF SUCH POSSIBILITY.

- (c) IN ALL SITUATIONS INVOLVING PERFORMANCE OR NONPERFORMANCE BY IO UNDER THIS AGREEMENT, CUSTOMER'S SOLE AND EXCLUSIVE REMEDY IS (1) TO TERMINATE THIS AGREEMENT BY WRITTEN NOTICE TO IO, AND (2) TO RECEIVE A PRO RATA REFUND OF ANY PRE-PAID MAINTENANCE SERVICE CHARGES, LESS ANY SUMS DUE AND OWING IO, AND LESS ANY MAINTENANCE FEES REMITTED TO SOFTWARE PUBLISHER.

5. EXCLUSIONS

- (a) This Agreement will not cover service required when due to: (i) Customer's unauthorized maintenance or repair of the Software, (ii) Customer's unauthorized addition, movement, or changes to the Software, (iii) negligence, (iv) abuse, (v) connection to inappropriate power supplies, (vi) fire, flood, wind, lightning, or other similar acts of God, (vii) failure of Customer to maintain proper environmental conditions for the System (as stated in (b) below), (viii) improper installation, repair, or alteration of the Software by anyone other than IO or its agents, (ix) software changes or attempted software changes by persons not authorized by IO, or (x) data base reprogramming required because of Customer error of any kind. If requested by Customer, repairs necessitated by any of the above excluded causes shall be performed by IO at IO's prevailing local rates for such services.
- (b) The Customer is responsible for maintaining suitable environmental conditions for the System. Suitable conditions shall include, but not limited to, the provision of proper electrical power, air conditioning, and humidity control, or any and other environmental requirements described herein. The presence of asbestos, other hazardous materials, or unsafe conditions ("Hazards") on the Premises shall be deemed an unsuitable environment for the System and IO shall be entitled to cease performance under this Agreement until such Hazards have been cured to IO's satisfaction. Furthermore, Customer will indemnify and hold harmless IO or its subcontractors or agents for harm caused by, or measures taken to deal with, such Hazards.
- (c) The Customer is solely responsible for maintaining backup copies of images, data and database files. Under no circumstances will IO be liable for any loss of images, data or database files or for the recovery of same.

6. FORCE MAJEURE

If IO's performance is prevented, delayed, or otherwise made impractical by reason of any flood, riot, fire, strike, explosion, war, governmental action, or regulation, or any other similar cause beyond the reasonable control of IO, IO shall be excused from such performance until the abatement of such causes(s).

7. ACCESS

Customer agrees to provide full accessibility to the Premises for IO's employees to perform services IO deems necessary. For software support, Customer agrees to allow for secure, remote access to the System via internet-based tools such as WebEx or PCAnywhere.

8. COVENANT NOT-TO-HIRE

Each party agrees not to hire or attempt to hire employees of the other party during the term and for a period of one (1) year after the term (including any renewal term) of this Agreement, without the express written consent of the other party.

9. TERMINATION

- (a) If either party is in default of its obligations under this Agreement and such default continues for thirty (30) days after written notice is given by the party not in default, such non-defaulting party may (in addition to all other rights and remedies provided in the Agreement or by law) terminate this Agreement.
- (b) Notwithstanding (a) above, if either party becomes insolvent, enters voluntary or involuntary bankruptcy, or takes any measures generally designed for the relief of debtors, then the other party may (in addition to all other rights and remedies provided in the Agreement or by law) terminate this Agreement immediately without notice.
- (c) Cancellation - either party may with or without cause cancel this Agreement with 30 days written notice to the other.
- (d) Upon termination, cancellation, or expiration of this Agreement, each party shall promptly return to the other party all papers, materials, and properties of the other held by such party.

10. ASSIGNMENT

Customer may not transfer or assign this Agreement to any third party without the express prior written consent of IO. IO may assign this contract to any parent company, subsidiary, or affiliate of IO, or in connection with the sale of substantially all of the assets of IO.

11. GOVERNING LAW

This Agreement shall be governed by and construed in accordance with the domestic laws of the State of Florida.

12. NOTICES

All notices to IO required or permitted to be given under this Agreement shall be in writing and sent to the address indicated below by certified U.S. mail or other delivery service providing the sender a signature upon receipt. Such notice shall be effective upon receipt.

IMAGE ONE
6206 Benjamin Road, Suite 301
Tampa, FL 33634
Fax: 813-887-5359
Telephone: 813-888-8288
Attention: Leigh Anne Dziuk

13. NON-WAIVER

The waiver by either party of any default or any obligation will not operate as a waiver of any subsequent default or excuse any future obligation.

14. COSTS

Non-prevailing party will pay all of prevailing party's costs and expenses, including reasonable attorney's and collection fees, incurred in enforcing this Agreement should collections or litigation prove necessary.

15. ENTIRE AGREEMENT

This Agreement constitutes the entire agreement between IO and Customer with regard to Customer's service and maintenance by IO. Any alterations or modifications to this Agreement must be in writing, and must be executed by both an officer of IO and the Customer. ANY ALTERATIONS OR MODIFICATIONS TO THIS AGREEMENT, UNLESS MADE IN ACCORDANCE WITH THE ABOVE, SHALL BE VOID AND OF NO EFFECT.

Please note: PC Hardware (e.g. workstations, servers, monitors, SCSI and other interface cards) provided as part of an imaging system solution are not maintained by IO but must be supported by the original equipment manufacturer (OEM). Customer is urged to properly register PC workstations and servers and to keep OEM Warranty and Support information available.